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9  
10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **WESTERN DIVISION**

13 SWEET PEOPLE APPAREL, INC. d/b/a  
14 MISS ME, a California corporation, and  
RCRV, INC. d/b/a ROCK REVIVAL, a  
California corporation,

15 Plaintiffs,

16 v.  
17

18 PHOENIX FIBERS, INC., an Arizona  
corporation, U.S. GENERAL EXPORT,  
19 INC., a California corporation, SAC  
INTERNATIONAL TRADERS, INC., a  
20 California corporation, SHAUKAT ALI  
CHOHAN, an individual, COMAK  
21 TRADING, INC., a California corporation,  
22 LYDIA EVILSA TERRAZAS CHO, an  
individual, MYUNG KWON CHO, an  
23 individual, TIFFANY ALANA WOLFF,  
an individual d/b/a MISS V LANE, XYZ  
24 COMPANIES 1-10, and JOHN AND  
25 JANE DOES 1-10,

26 Defendants.  
27  
28

Case No.: 2:16-cv-00940-TJH-JC

Hon. Terry J. Hatter Jr.

**PLAINTIFFS' *EX PARTE***  
**APPLICATION SEEKING AN**  
**ORDER SETTING A BRIEFING**  
**SCHEDULE FOR DEFENDANT**  
**PHOENIX FIBERS, INC.'S**  
**ANTICIPATED MOTION FOR**  
**SUMMARY JUDGMENT**

First Amended  
Complaint Filed: May 18, 2016

Final Pretrial  
Conference: January 30, 2017

[DECLARATION OF MATTHEW  
T. SALZMANN IN SUPPORT  
THEREOF and [PROPOSED]  
ORDER filed concurrently herewith]

**EX PARTE APPLICATION**

Plaintiffs Sweet People Apparel, Inc. d/b/a Miss Me, and RCRV, Inc. d/b/a Rock Revival (collectively “Plaintiffs”) respectfully submit the following *ex parte* application seeking an Order setting the following briefing schedule for defendant Phoenix Fibers, Inc. (“Phoenix Fibers”)’s anticipated motion for summary judgment:

Event	Date
Opening Brief	January 6, 2017
Opposition	January 23, 2017
Reply	January 30, 2017
Hearing (submission)	February 13, 2017

As the Court will recall, on December 19, 2016, Plaintiffs filed an *ex parte* application requesting an Order (a) continuing the Final Pretrial Conference from January 30, 2017 to March 27, 2017, or to a date and time thereafter that was convenient for the Court, and (b) setting a briefing schedule for Phoenix Fibers’ anticipated motion for summary judgment, which would set a date for the filing of Phoenix Fibers’ opening brief of no earlier than Friday, January 13, 2017 (the “December 19 *Ex Parte* Application”). Dkt. Nos. 75-76. Plaintiffs filed their December 19 *Ex Parte* Application after learning for the first time, on the afternoon of Friday, December 16, 2016, that Phoenix Fibers intended to file a non-time sensitive motion for summary judgment on December 23, 2016—two days before Christmas and the beginning of the winter Holiday period. Phoenix Fibers filed its opposition to the December 19 *Ex Parte* Application the following day, December 20, 2016. Dkt. Nos. 77-78.

On December 21, 2016, the Parties resolved the first portion of Plaintiffs’ December 19 *Ex Parte* Application—namely, Plaintiffs’ request for an Order continuing the Final Pretrial Conference to March 27, 2017—through the submission of a Joint Stipulation Re Request For An Order Continuing the Final Pretrial Conference and Setting Other Dates on December 21, 2016 (the “December 21 Joint

1 Stipulation”). Dkt. No. 79. The Court promptly accepted the Parties’ December 21  
2 Joint Stipulation, and entered an Order adopting the Parties’ proposed case  
3 management dates, including the continuation of the Final Pretrial Conference to  
4 March 27, 2017, by Order dated December 22, 2016 (the “December 22 Order”).  
5 Dkt. No. 80.

6 Because the Parties’ December 21 Joint Stipulation did not address the portion  
7 of Plaintiffs’ then-pending December 19 *Ex Parte* Application seeking an Order  
8 setting a briefing schedule for Phoenix Fibers’ anticipated motion for summary  
9 judgment, the Parties stated, in the December 21 Joint Stipulation, that they:

10 continue to respectfully request that the Court decide and issue  
11 an Order with respect to Plaintiffs’ remaining application  
12 requesting that the Court set a briefing schedule for Phoenix  
13 Fibers’ anticipated motion for summary judgment, which  
14 anticipates a moving date of no earlier than Friday, January 13,  
15 2017.

16 Dkt. No. 79 at 3:5-9. The Court, however, in approving the Parties’ December 21  
17 Joint Stipulation and entering its December 22 Order, denied Plaintiffs’ entire  
18 December 19 *Ex Parte* Application as “moot,” including the portion of Plaintiffs’  
19 application which sought to set a briefing schedule for Phoenix Fibers’ anticipated  
20 motion for summary judgment. Dkt. No. 80.

21 Thereafter, Plaintiffs renewed their efforts to negotiate a briefing schedule for  
22 Phoenix Fibers’ motion that (a) did not coincide with the winter Holiday period, and  
23 (b) would give Plaintiffs more than five (5) business days to oppose. Those efforts,  
24 unfortunately, have been unsuccessful, despite the fact that Phoenix Fibers’ motion is  
25 even less time sensitive now (following the entry of the December 22 Order) because  
26 the Final Pretrial conference has been continued until March 27, 2017. For the same  
27 reason, Phoenix Fibers’ stated rationale for both its original proposed briefing  
28 schedule (which contemplated Phoenix Fibers filing its opening brief on December

1 23, 2016) and its current proposal (which contemplates Phoenix Fibers filing its  
2 opening brief on December 30, 2016)—namely, its desire to have the motion fully  
3 submitted in advance of Final Pretrial Conference—would no longer require the  
4 completion of all briefing in January because the Final Pretrial Conference is now set  
5 for March 27, 2017.

6 Accordingly, Plaintiffs respectfully submit this *ex parte* application for an Order  
7 setting the foregoing briefing schedule for Phoenix Fibers’ anticipated motion for  
8 summary judgment. Plaintiffs’ proposed schedule would extend the completion of  
9 briefing on Phoenix Fibers’ non-time sensitive motion by only two weeks (from  
10 January 30 under Phoenix Fibers’ proposal to February 13 under Plaintiffs’ proposal),  
11 remove the briefing period from the remaining winter Holiday period when witnesses  
12 and clients have other priorities and limited availability, and equitably afford both  
13 sides time for opposition and reply. Phoenix Fibers’ current stated intention to file its  
14 motion on December 30, 2016, with Plaintiffs’ opposition due on January 9, and  
15 Phoenix Fibers’ reply due on January 16, accomplishes none of these goals, affords no  
16 benefit to Phoenix Fibers, and serves only to unnecessarily prejudice Plaintiffs.

17 Good cause is shown for the relief requested in Plaintiffs’ December 19 *Ex*  
18 *Parte* Application, this application, the Memorandum of Points and Authorities, and  
19 Declaration of Matthew T. Salzmann submitted therewith. In addition, this  
20 application is based on all other files and records in this action, and upon such other  
21 showing as may be made at any hearing that the Court shall convene hereon.

22 As required by Local Rule 7-19, Plaintiffs’ counsel gave notice of this  
23 application to Phoenix Fibers’ counsel on December 23, 2016, and to all other  
24 counsel on December 27, 2016. Defendants’ counsel’s contact information is as  
25 follows:

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24 Phoenix Fibers has indicated that it opposes Plaintiffs' *ex parte* request.  
25  
26  
27  
28

1 Dated: December 27, 2016

ARNOLD & PORTER LLP

2  
3 By: /s/ Matthew T. Salzmann

Eric D. Mason

4 John C. Ulin

5 Louis S. Ederer

6 Matthew T. Salzmann

7 *Attorneys for Plaintiffs*

## **MEMORANDUM OF POINTS AND AUTHORITIES**

Through this *ex parte* application, plaintiffs Sweet People Apparel, Inc. d/b/a Miss Me, and RCRV, Inc. d/b/a Rock Revival (collectively “Plaintiffs”) respectfully request that the Court issue an Order setting the following briefing schedule for defendant Phoenix Fibers, Inc. (“Phoenix Fibers”)’s anticipated motion for summary judgment, which schedule does not require Plaintiffs to spend the remaining winter Holiday period, when witnesses and clients have other priorities and limited availability, preparing an opposition, and provides Plaintiffs more than five (5) business days to oppose Phoenix Fibers’ non-time sensitive motion:

<b>Event</b>	<b>Date</b>
Opening Brief	January 6, 2017 <sup>1</sup>
Opposition	January 23, 2017
Reply	January 30, 2017
Hearing (submission)	February 13, 2017

The foregoing requested briefing schedule only slightly deviates from Phoenix Fibers’ contemplated schedule. Specifically, it delays the filing of Phoenix Fibers’ opening brief by seven (7) days (which eliminates the need for the submission of any briefing during the remaining winter Holiday period and the challenges of communicating with witnesses and clients at a time of year when they have other priorities and limited availability), equitably adjusts the periods for opposition and reply, and delays the submission of Phoenix Fibers’ motion by only two weeks. In light of the recent stipulated continuance of the Final Pretrial Conference from January 30, 2017 to March 27, 2017 (Dkt. No. 80), Plaintiffs’ requested briefing schedule still accomplishes Phoenix Fibers’ stated purpose of having its motion fully submitted prior to the Final Pretrial Conference, and further allows the Parties

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<sup>1</sup> To be clear, Plaintiffs have no objection to Phoenix Fibers filing its opening brief prior to January 6, 2017, so long as Plaintiffs are afforded until January 23, 2017 to file their opposition.

1 sufficient time to prepare proper, well-reasoned briefing of the issues.

2 As explained below, Plaintiffs will be prejudiced if they are required to oppose  
3 Phoenix Fibers' non-time sensitive motion between December 30, 2016 and January  
4 9, 2017, while Phoenix Fibers will not be prejudiced in any way by the Court's  
5 adoption of Plaintiffs' requested briefing schedule.

## 6 **I. STATEMENT OF FACTS**

7 As the Court is aware, on December 19, 2016, Plaintiffs filed an *ex parte*  
8 application requesting an Order (a) continuing the Final Pretrial Conference from  
9 January 30, 2017 to March 27, 2017, or to a date and time thereafter that was  
10 convenient for the Court, and (b) setting a briefing schedule for Phoenix Fibers'  
11 anticipated motion for summary judgment, which set a date for the filing of Phoenix  
12 Fibers' opening brief of no earlier than Friday, January 13, 2017 (the "December 19  
13 *Ex Parte* Application"). Dkt. Nos. 75-76. Plaintiffs filed their December 19 *Ex*  
14 *Parte* Application on the first business day following Phoenix Fibers' rejection of  
15 their proposal that the Parties submit a joint request for a continuance of the Final  
16 Pretrial Conference to March 27, 2017 (a proposal which Phoenix Fibers' co-  
17 defendants readily agreed to), to allow for the completion of fact discovery and  
18 expert disclosures, and Phoenix Fibers' disclosure of its intent to file a motion for  
19 summary judgment on Friday, December 23, 2016—the day before Christmas Eve  
20 and the start of the winter Holiday period. Putting aside the issue of the remaining  
21 fact discovery that needs to be completed before the March 13, 2017 discovery cutoff  
22 (Dkt. No. 80), under this schedule Plaintiffs' opposition was to be filed on January 6,  
23 2017—a period encompassing Christmas, Hanukkah and New Year's, and including  
24 two Court-observed Holidays and two Administrative Leave Days. Salzmann Decl.  
25 ¶¶3-4.

26 The following day, December 20, 2016, Phoenix Fibers filed its opposition to  
27 Plaintiffs' December 19 *Ex Parte* Application. Dkt. Nos. 77-78. In its opposition,  
28 Phoenix Fibers attempted to justify its curiously inopportune proposed briefing



1 schedule for its non-time sensitive motion by arguing that the schedule was dictated  
 2 by its desire to “have the motion filed, briefing completed, and motion submitted  
 3 before the Pretrial Conference.” Dkt. No. 77 at 6:19-21; *see also* Dkt. 77 at 3:20-21  
 4 (“The purpose of this submission was is [sic] to have the motion under submission by  
 5 before the Final Pretrial Conference.”). At that time, the Final Pretrial Conference  
 6 was scheduled for January 30, 2017. Dkt. No. 73. With that goal apparently in mind,  
 7 in its opposition, Phoenix Fibers offered the following alternative briefing schedule,  
 8 which, it contended, “alleviates Plaintiffs’ concerns about working over the  
 9 holidays”:

Event	Date
Opening Brief	December 30, 2016
Opposition	January 9, 2017
Reply	January 16, 2017
Hearing (submission)	January 30, 2017

15 Dkt. No. 77 at 13-23. For obvious reasons, that simply is not the case, and, more  
 16 importantly, misstates Plaintiffs’ concerns, which are premised on the unavailability  
 17 of witnesses and clients who have other priorities during this time. Salzmann Decl.  
 18 ¶5.

19 The foregoing briefing schedule that Phoenix Fibers now intends to follow  
 20 does not alleviate Plaintiffs’ concerns, as the ten (10)-day period allotted for  
 21 Plaintiffs’ opposition to Phoenix Fibers’ non-time sensitive motion includes New  
 22 Year’s weekend, two days of Hanukkah, an Administrative Leave Day, and a federal  
 23 Holiday. Moreover, this alternative schedule affords Phoenix Fibers a full seven (7)  
 24 days, all of which fall outside of the winter Holiday period, to submit its reply. In  
 25 other words, Phoenix Fibers’ alternative schedule arguably places Plaintiffs in a  
 26 worse position than they were in under Phoenix Fibers’ originally proposed schedule,  
 27 which contemplated Phoenix Fibers filing its opening brief on December 23, 2016,  
 28 and Plaintiffs filing their opposition fourteen (14) days later. Salzmann Decl. ¶6.

On December 21, 2016, the Parties reached agreement with respect to the portion of Plaintiffs' December 19 *Ex Parte* Application that sought a continuance of the Final Pretrial Conference to March 27, 2017. Dkt. No. 79. Specifically, the Parties agreed on the following proposed case management deadlines, and filed a joint stipulation and proposed order for the Court's consideration (the "December 21 Joint Stipulation"):

Event	Date
Initial Expert Disclosures & Reports	February 13, 2017
Rebuttal Expert Disclosures & Reports	February 27, 2017
Discovery Cutoff	March 13, 2017
Final Pretrial Conference	March 27, 2017
Jury Trial	May 9, 2017

Dkt. No. 79. However, despite the additional time before the Final Pretrial Conference, Phoenix Fibers continued to refuse to agree to any adjustment to its proposed briefing schedule on summary judgment. Salzmann Decl. ¶7. Accordingly, because the Parties were unable to resolve their dispute concerning the briefing schedule for Phoenix Fibers' anticipated motion—even though Phoenix Fibers' stated rationale for adopting a briefing schedule that coincided with the winter Holiday period (*i.e.*, its desire to have the motion fully submitted by the date of the Final Pretrial Conference) no longer required briefing in January—the Parties indicated in the December 21 Joint Stipulation, that they:

continue to respectfully request that the Court decide and issue an Order with respect to Plaintiffs' remaining application requesting that the Court set a briefing schedule for Phoenix Fibers' anticipated motion for summary judgment, which anticipates a moving date of no earlier than Friday, January 13, 2017.

1 Dkt. No. 79 at 3:5-9; Salzmann Decl. ¶9.

2 The following day, December 22, 2016, the Court partially approved the  
3 Parties' December 21 Joint Stipulation, and entered an Order adopting the Parties'  
4 proposed case management dates, including continuing the Final Pretrial Conference  
5 to March 27, 2017 (the "December 22 Order").<sup>2</sup> Dkt. No. 80. In entering the  
6 December 22 Order, however, the Court denied Plaintiffs' entire December 19 *Ex*  
7 *Parte* Application as "moot"—including the portion of Plaintiffs' application which  
8 was not addressed by the Parties' December 21 Joint Stipulation, and as to which the  
9 Parties indicated they continued to seek the Court's guidance. Dkt. No. 80.

10 Thereafter, on December 23, 2016, in response to further communications  
11 from Plaintiffs' counsel requesting that Phoenix Fibers reconsider its position on the  
12 briefing schedule with respect to its non-time sensitive motion and agree to the same  
13 schedule requested in Plaintiffs' instant application, Phoenix Fibers' counsel advised  
14 that they intend to "[h]onor[] the position that [they] took with the Court" in  
15 opposition to Plaintiffs' December 19 *Ex Parte* Application, and planned to file  
16 Phoenix Fibers' motion on December 30, 2016. Salzmann Decl. ¶12, Ex. A.  
17 Furthermore, when Plaintiffs' counsel advised Phoenix Fibers' counsel of their intent  
18 to renew the portion of their December 19 *Ex Parte* Application seeking an Order  
19 setting a briefing schedule for Phoenix Fibers' anticipated motion, which was not  
20 rendered moot by virtue of the Parties' December 21 Joint Stipulation, Phoenix  
21 Fibers' counsel stated that "the Court has already denied Plaintiff's [*sic*] application  
22 relying on our position and the schedule [Phoenix Fibers] suggested to the Court...."  
23 *Id.* ("...I have no idea why one would renew an application that was already  
24 denied....").

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25  
26 <sup>2</sup> The only aspect of the Parties' December 21 Joint Stipulation that the Court did not  
27 adopt was the Parties' proposed trial date of May 9, 2017. Instead, the December 22  
28 Order provides that "[t]he Court will set a trial date at the Final Pretrial Conference."  
Dkt. No. 80.

1 Plaintiffs do not share Phoenix Fibers' view, and do not believe that the Court  
2 purposefully denied as moot that portion of Plaintiffs' December 19 *Ex Parte*  
3 Application requesting that the Court set a briefing schedule for the anticipated  
4 summary judgment motion that does not unnecessarily fall during the winter Holiday  
5 period when witnesses and clients have other priorities and limited availability, and  
6 provides Plaintiffs a reasonable opposition period of more than five (5) business  
7 days. Rather, it is respectfully submitted that the Court's denial referred only to that  
8 portion of Plaintiffs' application that was in fact rendered moot by the December 21  
9 Joint Stipulation. Salzmann Decl. ¶13.

## 10 **II. ARGUMENT**

11 To obtain *ex parte* relief, the moving party must explain "why the regular  
12 noticed motion procedures must be bypassed" and that it is without fault in creating  
13 the "crisis" giving rise to the need for *ex parte* relief. *Mission Power Eng'g Co. v.*  
14 *Cont'l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995). Further, to justify *ex parte*  
15 relief, the moving party must show that its cause "will be irreparably prejudiced if the  
16 underlying motion is heard according to regularly noticed procedures." *Id.*  
17 Plaintiffs' *ex parte* application meets this criteria.

18 *First*, given that Phoenix Fibers now intends to file its non-time sensitive  
19 motion for summary judgment on Friday, December 30, 2016, notwithstanding its  
20 stipulation to the issuance of the December 22 Order adjourning the Final Pretrial  
21 Conference by nearly two months, Plaintiffs are not at fault in creating this last  
22 minute need for judicial intervention, and would be irreparably prejudiced if they  
23 were forced to proceed with an application seeking a modification of the  
24 contemplated briefing schedule on a regular motion schedule. Indeed, if this  
25 application is not heard on an *ex parte* basis, it would not be considered until *after*  
26 Plaintiffs will have already submitted their opposition to Phoenix Fibers' summary  
27 judgment motion, which would be due on January 9, 2017.

1        *Second*, Plaintiffs will be prejudiced if they are required to respond to Phoenix  
2        Fibers’ anticipated motion for summary judgment over the remaining winter Holiday  
3        period. In light of the holiday schedules and family commitments of clients and  
4        witnesses, Plaintiffs’ counsel would not be able to confer with Plaintiffs’  
5        representatives and certain key non-party witnesses until January 3 or 4, 2017, at the  
6        earliest, leaving only an additional five (5) days to prepare opposition papers under  
7        Phoenix Fibers’ proposed schedule. The schedule requested in this *ex parte*  
8        application would eliminate the disadvantages that would be imposed on Plaintiffs if  
9        they were required to prepare their opposition on a short schedule during the  
10       remaining winter Holiday period when witnesses and client contacts have family  
11       priorities and commitments. Salzmann Decl. ¶14.

12       *Third*, the adoption of Plaintiffs’ requested briefing schedule would impose no  
13       prejudice on Phoenix Fibers whatsoever. Phoenix Fibers’ newfangled argument in  
14       support of its anticipated December 30 filing—namely, that “further discovery is  
15       [not] needed and the MSJ will avoid further expense by my client, including but not  
16       limited to expert costs”—is belied by the positions taken in Phoenix Fibers’  
17       opposition to Plaintiffs’ December 19 *Ex Parte* Application and its subsequent  
18       agreement to the case management schedule set forth in the December 21 Joint  
19       Stipulation. Salzmann Decl. ¶15, Ex. A. Specifically, Phoenix Fibers’ opposition to  
20       Plaintiffs’ December 19 *Ex Parte* Application states that “[a]side from expert  
21       discovery, Phoenix Fibers intends to take two additional non-expert depositions,  
22       potentially complete a warehouse inspection, and request some follow-up documents  
23       from the Plaintiffs, mostly related to alleged damages.” Dkt. No. 77 at 3:7-10. While  
24       Phoenix Fibers may now be saying that it is prepared to forego that discovery, as  
25       explained in Plaintiffs’ December 19 *Ex Parte* Application, Plaintiffs intend to pursue  
26       important outstanding discovery prior to the close of fact discovery on March 13,  
27       2017, and, in particular, discovery of Phoenix Fibers’ immediate customer for the  
28       goods at issue, defendant U.S. General Export. Dkt. No. 75 at 6:17-26.

1 In addition, the two week adjustment to the briefing schedule that Plaintiffs  
2 request will not increase the costs incurred by any Party. Regardless of whether  
3 Phoenix Fibers' motion is submitted on January 30 or February 13, fact discovery  
4 remains to be completed, and initial expert reports are due on February 13, with  
5 rebuttal reports due two weeks later. It is unlikely that the Court will have decided  
6 Phoenix Fibers' anticipated motion before such reports become due, and a two week  
7 delay will not have a material impact on the costs incurred by the Parties in preparing  
8 this case for trial will prejudice no party. Salzmann Decl. ¶16.

9 *Fourth*, Plaintiffs' New York-based counsel are moving their offices to another  
10 building in connection with their firm's recent combination with another firm, with  
11 the actual move scheduled for January 13, 2017. Accordingly, Plaintiffs' New York-  
12 based counsel's routine will be significantly disrupted in the coming days and weeks,  
13 and their ability to devote the necessary attention to opposing Phoenix Fibers'  
14 putative summary judgment motion, which is not time-sensitive, will be negatively  
15 impacted. Salzmann Decl. ¶17. For its part, Phoenix Fibers can make no credible  
16 claim of prejudice from being asked to wait seven (7) days to file a motion that is not  
17 time sensitive, in order to facilitate the completion of discovery and Plaintiffs'  
18 counsel's other bona fide reasons for the slightly later briefing schedule on summary  
19 judgment requested herein.

20 Plaintiffs' proposed schedule is more sensible and equitable than the schedule  
21 that Phoenix Fibers intends to impose on Plaintiffs. Accordingly, there is good cause  
22 for the Court to grant Plaintiffs' application and enter an Order setting the requested  
23 briefing schedule for Phoenix Fibers' motion for summary judgment.

#### 24 **CONCLUSION**

25 For all of these reasons, Plaintiffs respectfully request that the Court enter an  
26 Order setting a briefing schedule for Phoenix Fibers' anticipated motion for summary  
27 judgment, which provides that Phoenix Fibers' opening brief be filed on January 6,  
28

1 2017, Plaintiffs' opposition be filed on January 23, 2017, and Phoenix Fibers' reply  
2 be filed on January 30, 2017.

3  
4 Dated: December 27, 2016

ARNOLD & PORTER LLP

5  
6 By: /s/ Matthew T. Salzmnn

7 John C. Ulin

8 Eric D. Mason

9 Louis S. Ederer

10 Matthew T. Salzmnn

11 *Attorneys for Plaintiffs*  
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